

1982 S.C. Op. Atty. Gen. 68 (S.C.A.G.), 1982 S.C. Op. Atty. Gen. No. 82-67, 1982 WL 155036

Office of the Attorney General

State of South Carolina

Opinion No. 82-67

November 9, 1982

***1 SUBJECT: License Tax**

The license required by § 52-15-245 on all locations having ten or more coin-operated devices is not transferable from one location to another.

TO: Mr. J. W. Lawson

Director

License Tax Division

South Carolina Tax Commission

QUESTION:

Is the license required by § 52-15-245 on all locations having ten or more coin-operated devices transferable from one location to another?

APPLICABLE LAW:

[§ 52-15-245, South Carolina Code](#) of Laws, 1976, as amended.

DISCUSSION:

[Section 52-15-245](#), newly added by the 1982 Appropriations Bill, provides in part that:

'Each person who leases or owns a location where ten or more machines, as defined by Section 52-15-210, are located shall pay a license tax of one thousand dollars. * * *.'

The license herein provided shall be in addition to all other licenses. Every person subject to the licensing requirements of this section shall, annually, in advance, on or before the first day of July of each year, obtain a license for the privileges previously mentioned. All such licenses shall expire on the thirtieth day of June following date of issue. * * *.'

The above statute requires the licensing of all locations having ten or more coin-operated devices. The question posed is whether the owners of such a licensed location can transfer that license to a new location should the prior location close or no longer need licensing.

To address this question, it must first be noted that the owner of a licensed location would not be entitled to a refund should the location no longer require licensing. [Section 52-15-245](#) makes no provisions for refunding the tax levied therein. It is well established that absent such authorization the refunding of taxes voluntarily paid cannot be had. [City of Columbia v. Peurifoy](#), 148 S. C. 349, 146 S. E. 93 (1928).

The transfer of a license is not permissible as it is tantamount to a refund. A transfer would allow the taxpayer to apply the unused portion of his first license to offset the amount due on the second. Whether a refund is by way of cash or a free second license, it remains in substance a refund. In tax matters, substance not form governs. [Southern Weaving Co. v. Query](#), 206 S. C. 307, 34 S. E. 2d 51 (1945) and [Beard v. South Carolina Tax Commission](#), 230 S. C. 357, 95 S. E. 2d 628 (1956).

Moreover, § 52-15-245 makes no provisions for the transfer of licenses and to imply such is not permitted. It is a cardinal rule that a tax statute cannot be extended beyond the clear import of the language used. [Meredith v. Elliott](#), 247 S. C. 335, 147 S. E. 2d 244 (1966).

CONCLUSION:

The license required by § 52-15-245 on all locations having ten or more coin-operated devices is not transferable from one location to another.

Ronald W. Urban
Assistant Attorney General

ATTACHMENT

September 15, 1982

Mr. Joe L. Allen, Jr.

*2 Deputy Attorney General

South Carolina Tax Commission

Columbia, South Carolina

Dear Mr. Allen:

We respectfully request your Opinion on the following:

[Section 52-15-245](#), newly added by the 1982 Appropriations Bill, provides for a one thousand dollar license for 'each person who leases or owns a location where ten or more machines, as defined by Section 52-15-210, are located. . . '.

An individual obtained a license for a location which operated during the license period but was subsequently closed. Can this license be transferred to a new location he plans to open that will have ten or more machines?

Your Opinion on this matter will be greatly appreciated.

Very truly yours,

SOUTH CAROLINA TAX COMMISSION
LICENSE TAX DIVISION
J. W. Lawson, Director

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